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BIKINI RESETTLEMENT AND RELOCATION ACT OF 1999

MARCH 9, 2000.—Ordered to be printed

Mr. MURKOWSKI, from the Committee on Energy and Natural Resources, submitted the following

REPORT

[To accompany H.R. 2368]

The Committee on Energy and Natural Resources, to which was referred the Act (H.R. 2368) to assist in the resettlement and relocation of the people of Bikini Atoll by amending the terms of the trust fund establishment during the United States administration of the Trust Territory of the Pacific Islands, having considered the same, reports favorably thereon without amendment and recommends that the Act do pass.

PURPOSE OF THE MEASURE

The purpose of H.R. 2368 is to approve a one-time three percent distribution from the Bikini Resettlement Trust Fund to the people of Bikini.

BACKGROUND AND NEED

Following the close of World War II, the United States began a nuclear testing program in the northern Marshall Islands. The area, which had been administered by Japan under a League of Nations Mandate, eventually was placed under the United Nations trusteeship system as part of the Trust Territory of the Pacific Islands, which included the Marshall Islands, the Carolines, and the Marianas (except for Guam). The Trust Territory of the Pacific Islands was the only strategic trusteeship created with oversight by the Security Council, rather than the General Assembly.

In 1946, the population of 167 at Bikini was relocated, first to Rongerik and then two years later briefly to Kwajalein and then to Kili island. Unlike Bikini, which is a large atoll with a sheltered lagoon, Kili is an island with little reef and no lagoon. Expectations

at the time of relocation were that the population would be allowed to return to Bikini at the end of the testing program. Between 1946 and 1958, 23 atomic and hydrogen bombs were tested at Bikini, vaporizing several islands. In 1969, a small portion of the population were permitted to return to Bikini. They were removed in 1978 when tests disclosed that the population had ingested elevated doses of radiation. Following the removal, the United States undertook a program at Bikini to test various methods to reduce or eliminate the uptake of radiation in the food chain. The United States has made various *ex gratia* payments to the Bikini people as well as a comprehensive settlement of \$75 million as part of the espousal provisions of the Compact of Free Association (sec. 177). In addition to the settlement contained in the Compact, the United States also committed to "provide funds for the resettlement of Bikini Atoll by the people of Bikini at a time which cannot now be determined" (Art. VI, Sec. 1 of the 177 Subsidiary Agreement). Congress went beyond that statement when it approved the Compact in 1986 by including in section 104(l) a pledge of full faith and credit to fund a settlement agreement that had been entered into with the Bikini people.

The Bikini Resettlement Trust Fund was originally established in 1982 by the FY 1982 Supplemental Appropriation legislation (P.L. 97-257) which appropriated \$20.6 million for the people of Bikini of which \$3 million would be distributed to individuals under a newly devised "head of household" formula and the balance placed in a tax-free, interest-bearing trust with the income and corpus, if necessary, to be expended for the relocation and resettlement of the Bikini people. At the time, since rehabilitation of Bikini itself was unresolved, the bulk of the expenditures were intended to go to improving conditions for the population residing on Kili and Ejit islands. The initial 25 year term of the trust was set to coincide with what was then estimated to be the time at which Bikini would be safe for human habitation. In 1988, a further appropriation of \$90 million was made to satisfy the requirements of the Compact legislation and the settlement agreement. The total contribution to the fund amounted to \$110 million and the market value today is approximately \$126 million.

Congress provided what it believed would be a sufficient corpus to provide for resettlement based on the removal of contaminated soil near residences with potassium treatment to block the uptake of cesium elsewhere. The decision, however, on the actual program was left to the Bikini population with the understanding that they could let the Fund grow until it could support a more expansive program, if that is what they wanted. The Bikini people have yet to come to a final agreement on how to proceed. Resettlement has proved to be a difficult task for several reasons, not the least of which is the memory of the failed resettlement effort in 1969. Efforts to settle on a resettlement program have also been complicated by debates over what constitutes a safe environment. As resettlement is delayed, the original population who were relocated has dwindled to about 90. This legislation would provide a one-time payment at the request of the Bikini people in recognition of the fact that most of those alive in 1946 may not survive to return to a fully restored Bikini.

While the legislation provides for a distribution to the “People of Bikini,” the Committee was advised by the counsel for the people of Bikini that the distribution formula adopted by the people of Bikini, and used in the 1988 distribution, will primarily benefit the elders of Bikini in their capacity as elders and as heads of households. This is the distribution method that the people of Bikini deem appropriate.

The Committee is concerned with the effect of commingling the two Bikini funds. The original fund was established in 1982 by the FY 1982 Supplemental Appropriation Act (P.L. 97-257) which provided \$20.6 million for the people of Bikini, of which \$3 million was distributed and the balance placed in a trust for relocation and resettlement. At the time, the understanding was that the proceeds would go primarily to the populations residing in Kili and Edit islands. In 1988, a further appropriation of \$90 million was made to satisfy the requirements of the Compact legislation and the settlement agreement. Those funds were intended primarily to provide a corpus for resettlement of Bikini atolls. By combining the two funds, the objectives of each have become intertwined.

The decision to reinvest annual interest income, thereby enlarging the corpus, or to spend the interest to provide for education and other community needs is one for the people of Bikini to make. The Committee wants to caution, however, that should the people of Bikini at some future time seek additional assistance in resettlement, Congress is likely to consider not only this distribution, but also all annual distributions in determining whether further *ex gratia* contributions are justified. The Committee will not prejudge what a future Congress will do, but does believe that a note of caution is warranted.

At the Committee hearing, the representative of the people of Bikini testified that, because of prudent investment and restraint by the Bikini Council, the corpus of the trust fund remains intact and the fund has earned almost 14 percent annually. A comparison of the trust fund’s value to the consumer price index offers a somewhat less rosy conclusion. If the fund’s return on investment equaled the rate of inflation and income was reinvested, the amounts appropriated by Congress for the trust fund would have a value of \$148 million as of January 1, 1999. The value of the trust fund on January 1, however, was only \$124.5 million. While it is true that, in actual dollars, the corpus of the fund has not diminished, when adjusted for inflation, the Resettlement Trust Fund has lost significant value over the years. Today, the buying power of the fund is 16 percent less than its value in 1988.

One reason for the diminution in value is the distribution to the people of Bikini of most or all of the annual interest income generated by the fund, a distribution authorized by Congress when the fund was established. These annual distributions, in part, supplement USDA food assistance and distributions received by the people of Bikini under section 177 of the Compact of Free Association.

The Bikini people spend some or all of the annual income generated by the trust fund to support their community. Income not used for this purpose is added to the corpus of the fund. For example, the fiscal year 2000 budget for the Resettlement Trust Fund anticipates revenue of \$9.7 million and proposes expenditures of

\$9.6 million. Thus, only one percent of the year 2000 revenue will be added to the fund for resettlement. While the annual revenue generated by the fund has been substantial in recent years, the amount set aside by the Bikini Council for resettlement has been very modest, as the year 2000 example illustrates. With each passing year, inflation continues to erode the value of the fund whenever, as is often the case, the people of Bikini spend an amount that is greater than their return on investment, less inflation.

By requesting a special distribution of up to three percent of the value of the trust, the people of Bikini only further reduce the amount available for resettlement. With this 3 percent distribution, the current value of the fund will be 19 percent less than the amount available in 1988. Unless Congress appropriates additional funds or the Bikini Council decreases the amount of annual income spent supporting the community, resettlement will be further delayed, or resettlement options limited, by the distribution authorized in this bill.

LEGISLATIVE HISTORY

H.R. 2368 was introduced by Congressman Don Young and George Miller on June 29, 1999, and referred to the Committee on Resources. The bill was ordered reported on July 21, 1999, and passed the House under suspension of the rules on September 13, 1999. A hearing was held by the full Committee on October 13, 1999.

At the business meeting on February 10, 2000, the Committee on Energy and Natural Resources ordered H.R. 2368 favorably reported, without amendment.

COMMITTEE RECOMMENDATIONS AND TABULATION OF VOTES

The Committee on Energy and Natural Resources, in open business session on February 10, 2000, by a unanimous voice vote of a quorum present, recommends that the Senate pass H.R. 2368 without amendment.

SECTION-BY-SECTION ANALYSIS

Section 1 provides a short title.

Section 2 requires an ex gratia distribution of three percent of the market value of the Bikini Resettlement Trust Fund as of June 1, 1999 to the people of Bikini.

COST AND BUDGETARY CONSIDERATIONS

The following estimate of the cost of this measure has been provided by the Congressional Budget Office:

H.R. 2368—Bikini Resettlement and Relocation Act of 1999

H.R. 2368 would amend the terms of the Resettlement Trust Fund for the People of Bikini to authorize a one-time distribution to the people of Bikini. The amount of the distribution would be limited to the greater of 3 percent of the fund's market value or the amount that exceeds the fund's principal. The federal government established the trust fund in 1982 to assist in relocating and resettling the people of the Bikini Atoll, who were moved off of their is-

lands by the United States to facilitate the government's testing of nuclear weapons during the 1940s and 1950s.

Although the federal government has imposed restrictions on how monies appropriated into the Resettlement Trust Fund (which have already been counted as outlays) can be used, the funds belong to the people of Bikini and thus are nonfederal. Consequently, enacting the legislation would have no impact on the federal budget. Because the legislation would not affect direct spending or receipts, pay-as-you-go procedures would not apply. H.R. 2368 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would have no significant impact on the budgets of state, local, or tribal governments.

The CBO staff contact is John R. Righter. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out H.R. 2368. The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of H.R. 2368, as ordered reported.

EXECUTIVE COMMUNICATIONS

The testimony provided by the Department of the Interior at the Committee hearing follows:

STATEMENT OF FERDINAND ARANZA, DIRECTOR OF THE OFFICE OF INSULAR AFFAIRS, DEPARTMENT OF THE INTERIOR

Mr. Chairman. I am pleased to be here this morning to discuss H.R. 2369, which would allow a distribution from the Bikini Resettlement Trust Fund.

H.R. 2368—Bikini Ex Gratia Distribution

H.R. 2368 calls for a one-time, three-percent distribution from the Resettlement Trust Fund for the People of Bikini.

In 1982, the Congress established the Trust Fund pursuant to the terms of Public Law 97-257 for "the relocation and resettlement of the Bikini people * * *, principally on Kili and Ejit Islands." In 1988, the Congress appropriated additional moneys for the Trust Fund and modified its terms to provide that funds could be also "expended for rehabilitation and resettlement of Bikini Atoll." That same public law provided as well that \$3 million of the Trust Fund was to be made available ex gratia to the people of Bikini over several years.

Much of the interest on the Trust Fund's \$110 million corpus is spent annually in support of the Bikini people.

Averaging a fourteen-percent annual return over its life, the Trust Fund has paid out, since its inception, million of dollars for infrastructure, clean-up and resettlement activities in Bikini Atoll; for housing and electrical power construction, maintenance and repairs at Kili and Ejit; and for scholarships, health care, and supplemental food. The Administration commends the elected leaders of Bikini for ensuring the fiscal integrity of the Trust Fund. They have hired reputable banks and well-respected investment advisors to serve as trustees and money managers. Every dollar of Trust Fund expenditures is audited, and financial statements and annual audits are routinely provided to my office, which oversees the Trust Fund.

One-hundred, sixty-seven persons living in Bikini Atoll in 1946 were removed from their islands. Of that group, those living today have declined to fewer than 90. The resettlement of Bikini is not likely to occur any time soon. The Bikinians cite this prospect of a delayed return as a reason for seeking the three-percent distribution. I am told that there is concern that the individuals who were actually removed from Bikini Atoll in 1946 are not likely to live to see the day of return to Bikini. The thought is that they should receive some added benefit before they die.

The Administration supports enactment of H.R. 2368 and suggests the following clarifying amendments to improve the bill:

- limit the three-percent distribution contemplated in the bill to Bikini persons who were alive and removed from Bikini in 1946, and
- strike the last sentence of the bill, which implies that the Congress may make additional ex gratia payments.

To my knowledge, no such payments are anticipated. This legislation should not raise expectations where there is no present intention to appropriate new funds.

If requested by the Committee, we would be glad to provide a drafting service for these recommended amendments.

Thank you for this opportunity to express our views.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the Committee notes that no changes in existing law are made by the Act H.R. 2368, as ordered reported.